

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
MOBILE DIVISION

KENNETH J. GRAYSON,

Plaintiff,

vs.

FOREMOST INSURANCE COMPANY
GRAND RAPIDS, MICHIGAN, FX
INSURANCE AGENCY, LLC and
fictitious parties 1-10, whether singular or
plural those other persons, firms,
corporations, or other entities, whose
wrongful conduct either caused or
contributed to cause the injuries and
damages to the Plaintiff, all of whose
true and correct names are unknown to
the Plaintiff at this time, but will be
substituted once they are ascertained,

Defendants.

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CASE NO.: 1:23-cv-00114-TFM-MU

FIRST AMENDED COMPLAINT

COMES NOW, the Plaintiff, KENNETH J. GRAYSON, by and through his attorney of record ROBERT D. (BO) KEAHEY JR., and respectfully files his First Amended Complaint to add FX Insurance Agency, LLC as a party Defendant and Counts Three and sets forth as follows:

1. Plaintiff, KENNETH J. GRAYSON, is over the age of nineteen (19) years, and a resident of Clarke County, Alabama.

2. Defendant, FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN (hereinafter "Foremost"), is a foreign corporation, which sold, issued, and serviced, and/or which should have sold, issued, and serviced, a claim for a policy of insurance to the plaintiff in Clarke County, Alabama, in regard to the Plaintiff's home located at 235 Butler Drive,

Thomasville, Alabama 36784 and at all times material hereto was doing business in Clarke County, Alabama.

3. Defendant, FX INSURANCE AGENCY, LL C (hereinafter “FX”), is a foreign limited liability company, which sold, issued, and serviced, and/or which should have sold, issued, and serviced, a claim for a policy of insurance to the plaintiff in Clarke County, Alabama, in regard to the Plaintiff’s home located at 235 Butler Drive, Thomasville, Alabama 36784 and at all times material hereto was doing business in Clarke County, Alabama.

4. Fictitious parties 1-10, are those persons, firms, corporations or other entities who or which are otherwise liable to the Plaintiffs by reason of their wrongful acts, and/or other wrongful conduct which is more specifically stated below, and whose identities are not known at the present time, but will be substituted by amendment when ascertained.

STATEMENT OF FACTS

5. On or about July 31, 2022, the Plaintiff’s home located at 235 Butler Drive, Thomasville, Alabama 36784 was severely damaged by fire and the Plaintiff made a timely claim with the Defendant’s insurance company, Foremost, which had the home insured.

6. Defendants even after being notified of the damage has refused to pay the claim in regard to the subject damage to the Plaintiff’s home.

7. As a result of the defendants’ wrongful actions, the plaintiff has suffered the loss and use of his property, consequential damages, compensatory damages, severe and emotional mental anguish and distress, costs and attorney fees associated with this lawsuit, and other damages which are set forth herein.

COUNT ONE **(Bad Faith)**

8. Plaintiff re-alleges all prior paragraphs of this Complaint as if set out here in full.

9. Defendants have denied coverage for the loss sustained by the Plaintiff on or about July 31, 2022, when his subject home suffered a total loss due to fire which was covered under the plaintiffs' insurance policy with the defendant.

10. Said denial by Defendants were made in bad faith.

11. As a proximate result of said bad faith denial of this claim, Plaintiff has suffered damages, including but not limited to the loss and use of his home, economic loss, cost of repairs, consequential damages, compensatory damages, financial loss, severe mental anguish, severe emotional distress, costs and attorney fees associated with this lawsuit.

12. Due to the bad faith nature of the denial of this claim, the plaintiff claims punitive damages of defendants.

WHEREFORE, THE PREMISES CONSIDERED, the Plaintiff demands a judgment against the Defendants, in an amount of both compensatory and punitive damages as a jury deems reasonable and may award, plus interest and cost of this action.

COUNT TWO
(Breach of Contract)

13. Plaintiff re-alleges all prior paragraphs of this Complaint as if set out here in full.

14. The plaintiff made a claim with the defendant and/or fictitious parties 1-10, for the loss sustained on or about July 31, 2022, when the Plaintiff suffered a total loss due to fire to his home located at 234 Butler Drive, Thomasville, Alabama 36784.

15. The plaintiff had in effect on or about July 31, 2022, a policy of insurance with the Defendant providing coverage for the complete total loss suffered to his home and property.

16. The policy of insurance providing coverage for the damage to the subject home was policy number 5007977419 issued by the defendant.

17. The total loss to the subject home located at 235 Butler Drive, Thomasville,

Alabama 36784 was duly reported to the Defendants.

18. Defendants and/or fictitious parties 1-10, have denied coverage for the loss and the damage to the plaintiff's home incurred on or about July 31, 2022.

19. The denial of coverage by defendants, and/or fictitious parties 1-10, is a breach of the contract of insurance bearing policy number 5007977419 with the defendants.

WHEREFORE, THE PREMISES CONSIDERED, the Plaintiff demands a judgment against the Defendants, in an amount of both compensatory and punitive damages as a jury deems reasonable and may award, plus interest and cost of this action.

COUNT THREE
(Negligent Procurement)

20. Plaintiff re-alleges all prior paragraphs of this Complaint as if set out here in full.

21. Defendants and/or fictitious parties 1-10, undertook a duty to procure insurance coverage on Plaintiffs' home located at 234 Butler Drive, Thomasville, Alabama 36784.

22. Defendants and/or fictitious parties 1-10 were negligent in procuring insurance coverage for the Plaintiffs' home located at 234 Butler Drive, Thomasville, Alabama 36784.

23. As a proximate result of said negligent procurement, Plaintiff has suffered damages, including but not limited to the loss and use of his home, economic loss, cost of repairs, consequential damages, compensatory damages, financial loss, severe mental anguish, severe emotional distress, costs and attorney fees associated with this lawsuit.

WHEREFORE, THE PREMISES CONSIDERED, the Plaintiff demands a judgment against the Defendants, in an amount of both compensatory and punitive damages as a jury deems reasonable and may award, plus interest and cost of this action.

Respectfully submitted,

WILLIAMS & KEAHEY

Attorneys for Kenneth J. Grayson

/s/ Bo Keahey

ROBERT D. (BO) KEAHEY, JR.
(ASB-KEAHR0241)

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on this the 28th day of July, 2023, I filed the foregoing document electronically with the Clerk of Court using the CM/ECF system which will send notification to all counsel of record.

Kori L. Clement
KLASING, WILLIAMSON & BURKE, PC
1601 Providence Park
Birmingham, Alabama 35242
Email: clem@harelaw.com

/s/ Bo Keahey

ROBERT D. (BO) KEAHEY, JR.

PLEASE SERVE DEFENDANT BY CERTIFIED MAIL AT THE FOLLOWING ADDRESS:

FX Insurance Agency, LLC
Registered Agent- Corporation Service Company, Inc.
641 South Lawrence Street
Montgomery, Alabama 36104